supporting the view that presumptions are evidence, by the case of *Coffin* v. *United States, supra,* where the charges as originally given were substantially the same as those later given on the new trial. The growth of certain presumptions (death from seven years' absence) and the declining strength of others (legitimacy in England) seem more explicable on the theory that courts have regarded legal presumptions as a matter of evidence peculiarly within their control than that they were consciously formulating rules of substantive law. In view of this development; of the admittedly equivocal discussion of legal presumptions in many cases; of the many precedents for instructions rather favoring this theory; and of the practicability of conveying an artificial strength to a logical inference to be formed by the jury—this theory, though less scientific, scarcely deserves the severe criticism that it has suffered.

POWER OF TRUSTEES TO LEASE FOR A TERM EXTENDING BEYOND THE TRUST ESTATE.—When real property is impressed with a trust for the life of a beneficiary, the power of the trustee to lease may be viewed from the standpoint of the cestui que trust, or from that of the remainderman in fee. Whether the trustee acted with prudence as to rents, tenants, length of term, etc., are questions that concern the cestui; only the length of term affects the remainderman. For if it extend beyond the trust estate, the remainderman will take, not the property, as intended, but only the income. *Gomez* v. *Gomez* (1894) 81 Hun 566. Cases directly concerned with this power in either aspect are not numerous and the courts have sometimes not been careful in examining authorities to distinguish between the two questions respectively presented. If the trustees have implied or express power to lease, but the will or deed is silent as to the term, the lease granted may be one certain to bind the ultimate owner, as where there is a permanent lease, *Hitch* v. *Davis* (1853) 3 Md. Ch. 262, or, as in a recent case, a ninety-nine year lease, *In re Hubbell Trust* (Ia. 1907) 113 N. W. 512, or for a term of years with covenants for renewal. *Newcomb* v. *Ketteltas* (N. Y. 1855) 19 Barb. 608; *Bergengren* v. *Aldrich* (1885) 139 Mass. 259. Or it may be that the lease granted is for a short term, and the remainderman's interest be threatened only by the premature death of the cestui. As upholding the right to benefit the cestui by leases which may operate on the remainderman, *Naylor* v. *Arnitt* (1830) 1 R. & M. 502, *Fitzpatrick* v. *Waring* (1882) 11 L. R. Ir. 35, contra, *In re Shaw's Trusts* (1871) L. R. 12 Eq. Cas. 124, are often cited. These English cases do not deal with the leasing power from the remainderman's standpoint, but seem merely to determine whether the trustee could lease at all. *Newcomb* v. *Ketteltas, supra,* is the same: the trust estate had not expired and the court was concerned with the immediate status of the lease. The earliest case in this country is *Hitch* v. *Davis, supra,* where the bill asking authority to lease was dismissed because those ultimately entitled would be injured. *Greason* v. *Keteltas* (1858) lends some weight to the opposite view; but the trust was in continuance and the court merely looked to the prudence and good faith of the trustees as affecting the beneficiaries. It is doubtful if these two cases support the proposition that the trustees have

authority to renew leases after the death of the life-tenant, pursuant to a convenant. Cf. *Gomez* v. *Gomez, supra.* Later New York cases have qualified these decisions so that it may now be said that the trustee without express authority has no power to lease real property for a period which is certain to extend beyond the term of the trust, so as to bind the remainderman. *Matter of New York City* (1903) 81 App. Div. 27; *Matter of Armory Board* (1899) 29 Misc. 174; *Wier* v. *Barker* (1905) 104 App. Div. 112; *Matter of McCaffrey* (N. Y. 1888) 50 Hun 371; accord, *Bergengren* v. *Aldrich, supra; Standard Paint Co.* v. *Prince Mfg. Co.* (1895) 153 Pa. 474. In these cases, the leases, by reason of their length or of the renewal covenants, were certain to extend beyond the trusts. But if the term is admittedly reasonable, e. g., five years, where the probability of life of the beneficiary is twenty-five years, and the trust does terminate before the lease, what the rights of the lessee, the cestui's estate, and the remainderman would be, has never been squarely presented, although the language of the above cases could be logically applied to such a case. Such a lease would be good if made or sanctioned by the court before execution, *Hutcheson* v. *Hodnett* (1902) 115 Ga. 990, subject to be defeated by the cestui's death; for as the trustee cannot lease for the longest possible term, neither is he required to be in constant expectation of the life-tenant's death. In *Hines* v. *McCombs* (Ga. 1907) 58 S. E. 1124, the lease was held to continue after the cestui's death. The trustee, however, had express power to encroach upon the corpus of the trust. If the lease shall be good for the trust term and void for the excess only, see *Griffen* v. *Ford* (N. Y. 1857) 1 Bosw. 123 and *Matter of New York, supra,* p. 35, it is unjust to the tenant for life, for a lease of so uncertain tenure will produce no adequate income. *Fitzpatrick* v. *Waring, supra,* p. 48, per Law, C. The latter case intimates that the lease ought to bind the remainderman. It is difficult to see why the law should benefit one party at the expense of another, *Hitch* v. *Davis, supra,* and whether a court of chancery has power to bind such interests by a decree is doubtful. See *Gomez* v. *Gomez, supra,* dissenting opinion by Van Brunt, P. J. The court may take the view that such a lease, being reasonable, is an equitable method of settling these conflicting interests. Possibly the intent of sec. 86 of the Real Property Law (N. Y. Laws 1896, Chap. 547) was to enable the trustee to make a lease for five years that should be protected if the trust ended before that time. See *Wier* v. *Barker, supra,* p. 17.

A better method, it is submitted, protecting all the parties and benefiting none at the expense of another, is to require the lessee to surrender the unexpired term, upon compensation from the cestui's estate. In *Weeks* v. *Weeks* (1887) 106 N. Y. 646, where a receiver executed a lease, the court awarded compensation to the lessee for the term extending beyond the close of the litigation. It must be admitted that the result of such a rule is to reduce somewhat the value of the leasehold estate and consequently the income of the cestui, especially if the compensation to the lessee for the surrender is uncertain because the cestui has no other property or income. Nevertheless it seems the best method of adjusting the conflicting interests involved.